

## **REMARKS**

Claims 1-11 are currently pending.

### **Drawing Objection**

Applicants have submitted herewith one Replacement Sheet containing revised FIG. 1, which has been amended to include “descriptive” labels as requested by the Examiner.

Withdrawal of the drawing objection is requested.

### **Specification Objections**

The specification has been amended, for example, by removing the title of the invention from the Abstract, as requested by the Examiner. Therefore, withdrawal of the specification objection is requested.

### **Claim Rejections - 35 U.S.C. §102**

Claims 1-2, 6-7 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication 2004/0153497 to Van Dyke. The rejection is respectfully traversed. On a fundamental level, the Examiner has not made a *prima facie* showing the Van Dyke is a proper 102(e) reference.

Indeed, Van Dyke has an actual US filing date of December 30, 2003, and claims priority to a US Provisional application filed on January 3, 2003. Applicants’ current application has a US filing date of November 17, 2003, which precedes the actual US filing date December 30, 2003 of Van Dyke. In this regard, Van Dyke can only be deemed a proper 102(e) reference against the current claims by virtue of the earlier filing date of the Provisional application of January 3, 2003.

MPEP 2136.03 III notes that under 35 U.S.C. 102(e), the critical reference date of a U.S. application publication (which is entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e)) can be the filing date of the provisional application with certain exceptions – if the provisional application properly supports the subject matter relied upon in the US patent publication to make the rejection in compliance with 35 U.S.C. 112, first paragraph.

Here, although Van Dyke claims priority to a US Provisional application having a filing date of January 3, 2003, earlier than the actual US filing date of the current application, November 17, 2003, the Examiner has not shown, or attempted to show, if and how the earlier provisional application properly supports the subject matter in the Van Dyke publication reference, as relied on by the Examiner to support the current anticipation rejection. For at least this reason, no *prima facie* showing of anticipation has been made. At the very least, it is incumbent on the Examiner to support the current anticipation rejections, if possible, with direct citation to disclosure in the provisional application. Otherwise the rejections should be withdrawn.

#### **Claim Rejections - 35 U.S.C. §103**

(1) Claims 3 and 8 are rejected as being unpatentable over Van Dyke in view of U.S. Patent Publication 2005/0102421 to Horvath.

(2) Claims 4-5 and 9-10 are rejected as being unpatentable over Van Dyke in view of U.S. Patent Publication 2004/0236966 to D'Souza.


Each of the above obviousness rejections is legally deficient as a matter of law for at least the same reasons given above in that Van Dyke has not be properly established as a prior art reference under 102(e) against the current claims.

Moreover, with regard to the above obviousness rejection (1), it is respectfully submitted that such rejection is legally deficient as a matter of law as Horvath is **clearly not prior art against** the claimed inventions.

Indeed, Horvath has an actual US filing date of September 2, 2004, which is much later than Applicants' US filing date of November 17, 2003. Although Horvath seems to claim priority to a foreign application (GB) with a filing date of September 8, 2003, this "foreign priority date" is irrelevant under 102(e).

Indeed, as noted in MPEP 2136.03(I), 35 U.S.C. 102(e) is explicitly limited to certain references "filed in the United States before the invention thereof by the applicant". The filing dates of foreign applications that are claimed (via 35 U.S.C. 119(a) - (d), (f) or 365(a)) in applications, which have been published as U.S. application publications, for example, may not be used as 35 U.S.C. 102(e) dates for prior art purposes. In other words, the foreign priority date of the Horvath reference cannot be used to antedate the current application filing date. Thus, Horvath is clearly not prior art against the claimed inventions under 102(e). For at least the above reasons, the obviousness rejections are improper and should be withdrawn.

Respectfully submitted,

  
Frank V. DeRosa  
Reg. No. 43,584

F. Chau & Associates, LLC  
130 Woodbury Road  
Woodbury, New York 11797  
TEL.: (516) 692-8888  
FAX: (516) 692-8889